IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 3013 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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VIJAYKUMAR MAHADEVPRASAD JOSHI - Appellant(s)
Versus
UDAYAN LAXMIKANT VAID - Defendant(s)

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Appearance :
MR ASHUTOSH R BHATT for Appellant(s) : 1,
RULE SERVED for Defendant(s) : 1,
MR SHAKEEL A QURESHI for Defendant(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 07/05/2007

ORAL JUDGMENT

Present appeal has been filed under section 47 of Wards and Guardians Act, 1990 by the appellant herein, - original applicant challenging the judgment and order passed by the learned Presiding Officer, 2nd

Fast Track Court, Surat dated 21-1-2006 in dismissing the Misc. Guardianship Application No.228 of 2002.

2. Appellant herein, - original applicant is the maternal uncle of two minor sons of the respondent herein i.e. minor Jay and minor Vishal. He submitted an application before the trial Court by way of Misc. Guardianship Application No.228 of 2002 under section 10 of the said Act for appointing him as a guardian of the aforesaid two minors contending inter alia that his sister and wife of the respondent and the mother of the aforesaid two minors was ill-treated and thereafter she has died on 17-8-2001 in a suspicious circumstances, for which criminal prosecution was pending and therefore, it was contended that it is not in the interest of the aforesaid two minors that they stay with the respondent herein, father and therefore, it is requested to appoint him as a guardian and to hand over the custody of the aforesaid two minors to him. Considering the welfare of the aforesaid two minors and that the father is taking care of the aforesaid two minors very well and the minors are with the father since they are aged about 1 and ½ years and that he being a natural guardian, the learned trial Court by impugned judgment and order dismissed the said application. Being aggrieved by the judgment and order passed by the learned Presiding Officer, 2nd Fast Track Court, Surat dated 21-1-2006 in dismissing the Misc. Guardianship Application No.228 of 2002, the appellant herein, - original applicant has

preferred the present first appeal.

3. To know how the minors are treated by the father and also to know the wishes of the aforesaid two minors, this Court directed to produce both the aforesaid minors and also to ascertain their wishes and this Court has asked many questions to them. Both the minors are very matured and considering their wishes and their say, this Court is of the opinion that the respondent father is taking care of the aforesaid two minors in the best possible manner. The father is also taking interest in their education as well as other extra curriculum activities. Both the minors have bluntly stated that they do not want to go with their maternal uncle and that they want to leave with their father. The respondent,-father has also declared that considering the welfare of the minors, he is also not remarried and an affidavit is also filed by him that at-least, till the aforesaid two minors attain the age of majority, he will not re-marry looking to the interest and welfare of the aforesaid two minors. Considering the above, and the wishes of the two minors and considering the fact that the respondent father is their natural guardian, who is taking care of the two minors and that it will be in the interest of welfare of the children that they stay with their father, this Court is of the firm opinion that the learned trial Court has not committed any error in dismissing the guardianship application. In fact, this Court is also of the firm opinion that the custody of the minors be retained

with the respondent father, who is a natural guardian and it will be in their interest and welfare also. Under the circumstances, the present appeal is required to be dismissed and is accordingly dismissed. No costs.

(M.R. Shah, J.)

shekhar/-